

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 141 of 2016

Dated: 10 November, 2016

**CORAM: Shri Azeez M. Khan, Member
Shri Deepak Lad, Member**

In the matter of Interim Application in Case No. 141 of 2016 filed by M/s. OPGS Power Gujarat Pvt. Ltd. for interim directions to Maharashtra State Electricity Distribution Company Ltd. in the matter of Petition under Section 86(1)(f) of the Electricity Act, 2003 and Regulation 32 of the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2016 qua disputes with Maharashtra State Electricity Distribution Company over its arbitrary and wrongful refusal to grant the Petitioner Distribution Open Access

M/s. OPGS Power Gujarat Pvt. Ltd.Petitioner

V/s.

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)Respondent

Appearance:

Representative for the Petitioner: Ms. Dipali Seth (Adv)

Representatives for the Respondent: Shri. Ashish Singh (Adv)
Shri. B.Y. Khandait (Rep)

Authorized Consumer Representative: Dr. Ashok Pendse, TBIA

Daily Order

Heard the Advocate/ Representative of the Petitioner and Respondent on Interim Application in Case No. 141 of 2016.

1. The Petitioner submitted that:

- (i) The Petitioner, M/s. OPGS Power Gujarat Pvt. Ltd., has two Captive Generating Units with an installed capacity of 150MW each in Kutch District, Gujarat. One of

the Units (i.e Unit 2) is a Captive Generating Plant with Group Captive Consumers situated across the country, including the State of Maharashtra.

- (ii) The Petitioner supplies power through Unit 2 to its Group Captive Consumers situated in Maharashtra by availing Short Term Open Access (STOA) on the Inter-State Transmission System, including to its consumers connected to MSEDCL's Distribution System.
- (iii) MSEDCL has been consistently providing its consent for the Petitioner's Inter-State STOA from April, 2016 onwards up to September, 2016. However, MSEDCL has withheld its consent for October and November, 2016, on the ground of being in the process of resurfacing its Group Captive status, although there is no provision in the Distribution Open Access Regulations for doing so. Moreover, as stated by MSEDCL itself while giving earlier OA permissions to Group Captive consumers (e.g. Supreme Industries) , MSEDCL had itself noted that Group Captive status would be verified and finalised at the end of the financial year, which is as per the practice mandated by the Commission. MSEDCL would not at all be unduly burdened or inconvenienced if the Commission directs it to provide its consent in favour to the Petitioner's Inter-State STOA. Even if this Interim Application is allowed and the Petitioner is eventually unsuccessful in the captioned Petition, no prejudice whatsoever will be caused to MSEDCL as it is protected by Rules and Regulations of the Commission.
- (iv) Petitioner and its Group Captive Consumers would be gravely prejudiced and face severe hardship if MSEDCL is permitted to indefinitely withhold and effectively deny its consent in favour of the Petitioner's Inter-State STOA. Without Inter-State STOA, the Petitioner cannot supply power to its Group Captive Consumers connected to MSEDCL's distribution network. The Petitioner has been constrained to operate Unit 2 of its Generating Station at a sub-optimal load due to MSEDCL's withholding of Inter-state STOA, which necessitates utilising higher quantities of costly secondary oil. Consequently, the Petitioner has been compelled to incur far higher costs to generate a constricted quantum of power.
- (v) MSEDCL communicated its withholding of consent only on 30.09.2016 (for October, 2016 STOA Application) and 28.10.2016 (for October, 2016 STOA Application) (i.e., on the last day before the Open Access applied for would have commenced) despite the fact that OA application was made well within time limit. This has left the Petitioner's Group Captive Consumers no option but to procure power from MSEDCL at a much higher price, thereby incurring huge financial losses while unjustly benefiting MSEDCL.
- (vi) Petitioner prayed for interim reliefs as under:
 - (a) Direct MSEDCL to provide its consent forthwith under the applicable Regulations including under Regulation 8.3 and Regulation 12 of the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2016 to enable the Petitioner to avail inter-state STOA on an immediate basis;
 - (b) Stay the levy of any fees, charges or penalties on the Petitioner or its consumers,

which may arise as a consequence of MSEDCL's illegal and discriminatory withholding of consent;

- (c) Pass ex-parte ad interim orders in terms of Interim Prayer (a) and (b) above; and
- (d) Pass any other/ further order in the interest of justice.

2. MSEDCL submitted that:

- (i) MSEDCL received a copy of the Petition on 8 November, 2016 and hence could not file its Reply.
- (ii) MSEDCL requested one week to file its submission on the main application as the prayers in Interim Application and Main Application are almost the same and any relief on Interim Application shall amount to addressing the prayers in the main Petition.

3. The Commission asked MSEDCL under which provision of the Act or the Regulations it has withheld the consent of Inter-State STOA of the Consumers. Advocate of the MSEDCL stated that no such provision is available.

4. The Commission notes the submissions made by both the Parties. The Commission also notes that there is no such provision to withhold or reject the consent for Open Access on the basis of whether an applicant is Group Captive Consumer/ Plant or not. Ascertaining the status of Group Captive Consumer is required for levy of CSS and additional surcharge, if any, which would be determined on annual basis at the end of the financial year.

5. In view of the above, the Commission directs as under:

- (a) MSEDCL to provide its consent under the Distribution Open Access Regulations, 2016 to enable the Petitioner to avail Inter-State STOA on an immediate and regular basis until further Orders of the Commission;
- (b) MSEDCL may submit its Reply to the main Petition within a week, as requested;
- (c) Both the parties to act upon the soft copy of this Daily Order available on the website of the Commission.

Accordingly, interim relief is granted to the Petitioner till further Order. Main Case No. 141 of 2016 may be scheduled for hearing after submission of MSEDCL.

Sd/-

(Deepak Lad)
Member

Sd/-

(Azeez M. Khan)
Member